

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:11 CR 05

FILED
IN COURT
ASHEVILLE, N.C.
APR 25 2011
U.S. DISTRICT COURT
W. DIST. OF N.C.

UNITED STATES OF AMERICA,)
Vs.)
JORGE LUIS CANO MORENO.) RULE 11 INQUIRY and
) ORDER OF ACCEPTANCE
) OF PLEA

The court is advised that you have filed a written plea agreement with the government in this case. The court is required by the Federal Rules of Criminal Procedure to inquire and advise you concerning the agreement. The court must ask you some questions and you will be required to personally respond to those questions under oath. I will now ask the Clerk to administer the oath to you.

1. Do you understand that you are now under oath and that you are required to give truthful answers to the questions that I am about to ask you?

YES: X NO: _____

2. Do you understand that if you give false information under oath you may be prosecuted for perjury or false statements?

YES: X NO: _____

3. Are you able to hear and understand my questions?

YES: X NO: _____

4. Do you understand that you have the right to have a United States District Judge conduct this proceeding?

YES: X NO: _____

5. Recognizing your right to proceed before a district judge, do you expressly consent to proceed in this court, that is, before a United States Magistrate Judge?

YES: X NO: _____

6. Please state your full name, age, and education. *completed high school
Jorge Luis Cano Moreno age 37 can read, write and speak Spanish
can read, write and speak English*

7. Are you presently under the influence of any intoxicating liquors?

YES: _____ NO: X

Are you presently under the influence of any narcotics?

YES: _____ NO: X

Are you presently under the influence of any medicines or drugs of any kind?

YES: _____ NO: X

Have you taken any medications within the last 48 hours?

YES: X NO: _____

If so, what medications have you taken within the last 48 hours?

(1) Cetexa - taken for depression

8. Are you currently under the care of a physician?

YES: Dent NO: X

~~The physician~~ Have you ever been treated for mental illness?

YES: _____ NO: X

Have you ever been treated for substance abuse?

YES: _____ NO: X

9. Is your mind clear and do you understand that you are here today to enter a guilty plea that cannot later be withdrawn?

YES: X NO: _____

10. Have you and your attorney reviewed the bill of indictment and have you and your attorney reviewed the plea agreement?

YES: X NO: _____

11. From my examination of the plea agreement I am advised that you are pleading guilty to count one as contained in the bill of indictment.

Read count(s) of the bill of indictment to which the defendant is pleading guilty. Are you pleading guilty to that offense?

YES: X NO: _____

The law requires that I advise you of the essential elements of such an offense. The elements of the offenses to which you are pleading guilty are as follows:

Count One:

8 U.S.C. § 1326(a) and (b)(2)

Any alien who (1) has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter (2) enters, attempts to enter, or is at any time found in, the United States, unless

(A) prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien's reapplying for admission; or

(B) with respect to an alien previously denied admission and removed, unless such alien shall establish that he was not required to obtain such advance consent under this chapter or any prior Act; and

(2) whose removal was subsequent to a conviction for commission of an aggravated felony, such alien shall be fined under such title, imprisoned not more than 20 years', or both.

Elements:

1. That you are an alien;
2. That at the time and place described in the bill of indictment you had previously been arrested and deported from the United States;

3. That your deportation or removal was subsequent to your conviction for the commission of an aggravated felony;
4. That at the time and place described in the bill of indictment you had entered or were found in the United States;
5. That at such time you had not applied for or obtained the express consent from the Attorney General of the United States or the Department of Homeland ~~security~~ ^{Security} for your reentry into the United States; and
6. You did such all such acts unlawfully, knowingly, intentionally, and willfully.

Penalty:

I am also required by law to advise you concerning the maximum and minimum penalties prescribed by law for such an offense. Those maximum and minimum penalties are as follows:

The maximum possible penalty for this offense is a term of imprisonment of not more than 20 years', a fine not to exceed the amount of \$250,000, or both, a term of supervised release of not more than 3 years' and a \$100 special assessment.

12. Have you been advised by your attorney that if you are not a citizen of the United States, your guilty plea may have adverse immigration consequences?

YES: X

NO: _____

13. Have you been advised by your attorney that if you are not a citizen of the United States, your guilty plea may result in deportation or removal from the United States?

YES: X

NO: _____

14. a) Do you fully understand the charges against you, including the maximum and minimum penalties?

YES: X

NO: _____

- b) Do you understand each element of the offense(s) charged?

YES: X

NO: _____

c) Do you understand that upon a plea of not guilty the government would be required to prove each element of the offense charged beyond a reasonable doubt?

YES: X NO: _____

d) Do you understand that the government would be required to prove that the unlawful act(s) were committed knowingly, willfully, intentionally, and unlawfully?

YES: X NO: _____

15. If the court imposes an active term of imprisonment of more than one year, the court is required also to order a term of what is called "supervised release," and a term of supervised release may be ordered in other circumstances. This means that after a defendant is released from prison, there are certain terms and conditions they will be required to follow. The length of supervised release usually ranges from one to five years, but may be more or less than that for certain offenses. Do you understand the term "supervised release" as the court has explained them to you?

YES: X NO: _____

16. Do you understand that if you violate the terms and conditions of supervised release, you could be returned to prison for an additional period of time?

YES: X NO: _____

17. Do you understand that parole has been abolished in the federal system; and if you are sentenced to a term of imprisonment, you will not be released on parole?

YES: X NO: _____

18. Have you and your attorney discussed how the Sentencing Guidelines may apply in your case?

YES: X NO: _____

19. Do you understand how these Guidelines may apply to you?

YES: _____ NO: X

20. Do you understand that the court will not be bound by the Sentencing Guidelines but nonetheless must consult those Guidelines and take them into account when sentencing?

YES: X NO: _____

21. Do you understand that the sentence the Court will impose will be within the statutory limits and in the court's sound discretion and could be greater or less than the sentence as provided for by the Guidelines?

YES: X NO: _____

22. Do you understand that the court will follow the procedural components of the Guidelines system, which means that the Probation Office will prepare a presentence report which contains Guidelines calculations and both you and the Government will have an opportunity to object to any alleged deficiencies in the report?

YES: X NO: _____

23. Do you understand that in some circumstances you may receive a sentence that is different - that is, either higher or lower - than that called for by the Guidelines?

YES: X NO: _____

24. Do you understand that if the sentence is more severe than you expect or the court does not accept the Government's sentencing recommendation, you will still be bound by your plea and have no right to withdraw the plea of guilty?

YES: X NO: _____

25. Do you understand that the court has the discretion, in appropriate circumstances, to order you to make restitution to any victim of the offense. The court may also, in the appropriate circumstance, require you to pay the costs of your confinement in prison or costs of supervision or special investigative costs or all of these costs. The court may also require you to forfeit property involved in the offense. Do you understand these requirements as I have explained them to you?

YES: X NO: _____

26. Do you understand you have a right to plead not guilty, to have a speedy trial before a judge and jury, to summons witnesses to testify in your behalf, and to confront witnesses against you?

YES: X NO: _____

27. Do you understand that if you exercise your right to trial you would be entitled to the assistance of an attorney, that you would not be required to testify, that you would be presumed innocent, and the burden would be on the Government to prove your guilt beyond a reasonable doubt. Do you understand all of these rights?

YES: X NO: _____

28. Do you understand that by entering a plea of guilty you forfeit and waive (or give up) your right to plead not guilty, to a trial by jury and at that trial the right to assistance of counsel, the right to confront and cross-examine witnesses against you, and the right against compelled self-incrimination or any other rights associated with a jury trial. Do you understand that by entering this plea of guilty you are waiving (or giving up) all of these rights. There will be no trial. If your plea of guilty is accepted, there will be one more hearing where the district court will determine:

(a) Whether there is a factual basis for your plea; and
(b) What sentence to impose.

Do you understand that?

YES: X NO: _____

29. Are you, in fact, guilty of the count(s) in the bill of indictment to which you have come to court today to plead guilty? That is, did you commit the act(s) described in count one of the bill of indictment?

YES: X NO: _____

30. Is your plea of guilty voluntary and not the result of coercion, threats or promises other than those contained in the written plea agreement?

YES: X NO: _____

31. Do you understand that entering a plea of guilty to a felony charge may deprive you, at least for a time, of certain civil rights such as the right to vote, hold a public office, serve on a jury and possess a firearm?

YES: X

NO: _____

32. Is your willingness to plead guilty the result of prior discussions between your attorney and the attorney for the government?

YES: X

NO: _____

33. Have you and the government entered into a plea agreement in regard to this case? [Attorney for the government will present the terms of the agreement.]

YES: X

NO: _____

34. Do you understand and agree with the terms of the plea agreement as they have just been explained to you?

YES: X

NO: _____

35. Is this your signature on the plea agreement?

YES: X

NO: _____

36. Have you discussed your right to appeal with your attorney, and do you understand the plea agreement in this case provides that you may not appeal your conviction or sentence or contest the same in a post-conviction proceeding unless it is on the grounds of prosecutorial misconduct or ineffective assistance of counsel?

YES: X

NO: _____

Do you knowingly and willingly accept this limitation on your right to appeal and to file post-conviction proceedings?

YES: X

NO: _____

37. Counsel, have you reviewed each of the terms of the plea agreement with the defendant and are you satisfied that he(X) understands those terms?

YES: X

NO: _____

38. Have you had ample time to discuss with your attorney any possible defenses that you may have to the charges and have you told your attorney everything that you want your attorney to know about this case?

YES: X NO: _____

39. Are you entirely satisfied with the services of your attorney?

YES: X NO: _____

40. Are you telling the court that you know and understand fully what you are doing; that you have heard and understood all parts of this proceeding; and that you want the court to accept your plea of guilty?

YES: X NO: _____

41. Do you have questions, statements, or comments to make about anything brought up or discussed in the course of the proceeding? If you do, I will be happy to try and answer your questions or I will be glad to hear any statements or comments that you want to make.

YES: _____ NO: X

On advice and in the presence of counsel, the defendant respectfully requests the Magistrate Judge to accept his or her guilty plea. By signing below, the defendant (and counsel) certify and affirm that the answers given to the questions propounded by the court, as recorded above and on the record, are true and accurate to the best of their knowledge.

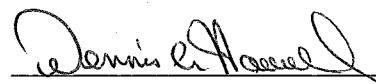
George J. Cane III
Defendant's Signature

J. Stewart
Counsel's Signature

Based upon the representations and answers given by the defendant (and counsel) in the foregoing Rule 11 proceeding, the court finds that the defendant's plea is knowingly and voluntarily made; and that the defendant understands the

charges, potential penalties, and consequences of said plea. Accordingly, the defendant's plea is hereby accepted.

SO ORDERED, this the 2nd day of April 2011.


DENNIS L. HOWELL
UNITED STATES MAGISTRATE JUDGE